

#18-17 5-7

LAW OFFICES  
CRIST, CRIST, GRIFFITHS, BRYANT, SCHULZ & BIORN  
A PROFESSIONAL CORPORATION  
880 HAMILTON AVENUE  
PALO ALTO, CALIFORNIA 94301  
TELEPHONE (415) 321-8000

F I L E D

MAY 2 1980

By [Signature], Deputy

ATTORNEYS FOR Defendant Exidy, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

CINEMATRONICS, INC.,  
a California corporation,

Plaintiff,

v.

VECTORBEAM, a California  
corporation; EXIDY, INCORPORATED,  
a California corporation;  
and DOES 1 through X,  
inclusive,

Defendants.

Case No. 451437

DECLARATION OF  
ROBERT E. SCHULZ  
IN OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION

Date May 7, 1980 JSH

Time 1:30 pm

Dept Dept 17

I, ROBERT E. SCHULZ, hereby declare:

1. That I am an attorney at law, licensed to practice  
before all the courts of the State of California, and am the  
attorney for Exidy, Inc.

2. That on behalf of Exidy, Inc., I have met with and  
discussed the various disagreements between Exidy and  
Cinematronics arising out of the purchase of Vectorbeam  
with attorney Phillip DeCaro. He indicated he represented  
Cinematronics in those discussions. Mr. DeCaro sent to me a  
letter on behalf of Cinematronics appointing an arbitrator

1 with respect to a dispute involving certain inventory problems.

2 A copy of this letter is attached hereto as Exhibit "A".

3 Notwithstanding Mr. DeCaro's acting on behalf of  
4 Cinematronics, Cinematronics apparently notified Vectorbeam  
5 of its intent to seek a Temporary Restraining Order, by  
6 leaving word with Mr. DeCaro, its own attorney (see Declaration  
7 of David K. Demergian).

8 3. On April 17, 1980, I caused to be filed the Complaint  
9 entitled "Exidy, Inc. vs. Cinematronics, Inc." in Santa  
10 Clara County Superior Court, Docket No. 448656. A true copy  
11 of said Complaint is attached hereto as Exhibit "B".

12 4. Notwithstanding my prior negotiations with Mr.  
13 DeCaro, I was never notified of Cinematronics' intent to  
14 seek a Temporary Restraining Order.

15 5. I am representing defendants with respect to a  
16 claim of Mr. Gil Levine for breach of an employment agreement.  
17 Attached hereto as Exhibit "C" are letters received from Mr.  
18 Levine's attorney which describe the claim being made and  
19 which indicate that Mr. Pierce, on behalf of Vectorbeam, has  
20 specifically reinstated the Employment Agreement after Mr.  
21 Levine's voluntary resignation. Mr. Levine's claim is  
22 alleged to be \$216,000 plus attorney's fees.

23 I declare under penalty of perjury that the foregoing

24 ////

25 ////

26

1 is true and correct.

2 Executed this 29th day of April, 1980, at Palo Alto,

3 California.

4   
5  
6 ROBERT E. SCHULZ

7  
8 ////

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*Law Offices of*

Phillip Seymour DeCaro

A LAW CORPORATION

20 CIERVOS ROAD  
PORTOLA VALLEY, CA 94025  
TELEPHONE (415) 851-8500

March 28, 1980

Robert E. Schulz  
550 Hamilton Ave.  
Palo Alto, Ca.

Re: Cinematronics-Exidy Sale and  
Purchase of Vectorbeam

Dear Bob:

This note will confirm that Eric Hart, C.P.A., of Hart, Chester, C.P.A.'s will be the Cinematronics nominee to attempt to resolve the adjustment claims raised by Exidy under the Purchase Agreement.

I've advised Eric that we did not yet have any C.P.A. nominated by Exidy.

Very truly yours,



PHILLIP SEYMOUR DeCARO

PSD:ag

cc: Cinematronics, Inc.  
Eric Hart, C.P.A.

EXHIBIT A

1                                   LAW OFFICES  
2   CRIST, CRIST, GRIFFITHS, BRYANT, SCHULZ & BIORN  
3                                   A PROFESSIONAL CORPORATION  
4                                   880 HAMILTON AVENUE  
5                                   PALO ALTO, CALIFORNIA 94301  
6                                   TELEPHONE (415) 321-5000

(ENDORSED)  
**FILED**  
APR 17 1980

JOHN KAZUBOWSKI, Clerk

7  
8  
9   ATTORNEYS FOR Plaintiff

10           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11                   IN AND FOR THE COUNTY OF SANTA CLARA

12   EXIDY, INC., a California                   )  
13   corporation,                                   )

14                   Plaintiff,                   )

No.           448565

15                   vs.                                   )

COMPLAINT FOR DAMAGES  
AND REFORMATION

16   CINEMATRONICS, INC., a                   )  
17   California corporation,                   )  
18   DOES 1-100,                                   )

19                   Defendants.                   )

20           Plaintiff alleges:

21                                   FIRST CAUSE OF ACTION  
22                                   (FRAUD)

23                                   I

24           Exidy, Inc., is and at all times herein mentioned was a  
25   corporation duly organized and existing under the laws of the  
26   State of California, with its principal place of business in  
Santa Clara County.

II

Cinematronics, Inc., is, and at all times herein mentioned  
was, a corporation duly organized and existing under the laws

**EXHIBIT B**

1 of the State of California.

2 III

3 By the terms of the Stock Purchase Agreement at issue  
4 in this action, the parties thereto agreed that venue in an  
5 action on said Stock Purchase Agreement would be proper in  
6 Santa Clara County.

7 IV

8 Plaintiff alleges on information and belief that Phillip S.  
9 DeCaro was at all relevant times herein a shareholder and  
10 director of Cinematronics, Inc. Plaintiff alleges that Jim  
11 Pierce and Thomas B. Stroud, Jr., were at all times herein  
12 officers and directors of Cinematronics, Inc.

13 V

14 At all times herein mentioned, Phillip S. DeCaro, Jim Pierce  
15 and Thomas B. Stroud, Jr., were authorized and empowered by  
16 Cinematronics, Inc., to act, and did act as the agent of  
17 Cinematronics, Inc., and each and all of the things herein  
18 alleged to have been done by them were done in the capacity  
19 of and as agent for said Cinematronics.

20 VI

21 Plaintiff is informed and believes and thereon alleges  
22 that at all times herein mentioned each of the defendants was  
23 the agent and employee of each of the remaining defendants,  
24 and in doing the things hereinafter alleged, was acting within  
25 the scope of such agency.  
26

VII

Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

VIII

On or about November, 1979, at Sunnyvale, California, plaintiff and defendants, and each of them, entered into a series of negotiations for the purchase of 390,000 shares of common stock representing all of the issued and outstanding shares of Vectorbeam, a California corporation, by plaintiff, from Cinematronics, Inc. Plaintiff was represented by H. Kauffman. Defendant Cinematronics, Inc., was represented by Phillip S. De Caro, an attorney, licensed to practice law in California.

IX

As a result of these negotiations, on or about December 5, 1979, in Santa Clara County, plaintiff, through its officers H. R. Kauffman and Howell Ivy, and defendant Cinematronics, Inc., through its officers Jim Pierce and Thomas B. Stroud, Jr., executed a Stock Purchase Agreement drafted by defendant Cinematronics' agent, Phillip S. DeCaro. A copy of said Stock Purchase Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. Vectorbeam executed a Corporate Installment Note drafted by defendant Cinematronics' agent, Phillip S. DeCaro in favor of defendant Cinematronics,

1 Inc., in the amount of \$526,942.00, as payment for all of  
2 on which plaintiff liable by virtue of its guarantee.  
3 the issued stock of Vectorbeam/ A copy of said Corporate

4 Installment Note is attached hereto as Exhibit "B" and  
5 incorporated herein by reference. The Stock Purchase Agreement  
6 provides that in the event of any controversy, claim or  
7 dispute between the parties hereto, arising out of or relating  
8 to this agreement or any breach thereof, the prevailing  
9 party shall be entitled to recover from the losing party  
reasonable expenses, attorney's fees and costs.

10 X

11 Prior to execution of the Stock Purchase Agreement,  
12 defendant Cinematronics, Inc., made a series of false and  
13 fraudulent representations to plaintiff including the following:

14 1. That the financial statements and information on  
15 Vectorbeam delivered to plaintiff fairly presented the  
16 financial condition of Vectorbeam as of that date and fairly  
17 outlined the results of Vectorbeam's operation for the  
18 periods indicated, in accordance with generally accepted  
19 accounting principles consistently applied.

20 2. That Vectorbeam was not subject to any undisclosed  
21 liability or liabilities of any kind, absolute or contingent.

22 3. That Vectorbeam was not a party to any contracts  
23 or commitments of any kind except those disclosed in the Stock  
24 Purchase Agreement executed on December 5, 1979.

25 4. That the Stock Purchase Agreement accurately and truly  
26 reflected the terms of that Stock Purchase Agreement as they

1 had been agreed to by the parties to the Stock Purchase Agreement.

2 5. That the inventory of Vectorbeam was accurately valued.

3 6. That Vectorbeam's accounts receivable represented only  
4 amounts legitimately believed to be owed to Vectorbeam.

5 7. That Vectorbeam's accounts payable represented only  
6 amounts owed by Vectorbeam for goods and services sold and  
7 delivered to Vectorbeam.

8 8. That defendant Cinematronics would permit the Corporate  
by virtue of its guarantee  
Installment Note, whereby plaintiff/promised to pay Cinematronics  
10 \$487,160 in monthly installments of \$35,000, to be subordinated  
11 under normal and usual terms to loans made by institutional  
12 lenders for inventory and accounts receivable financing.

13 9. That the subsequent adjustments provision contained  
14 in the Stock Purchase Agreement (paragraph 6) would protect  
15 plaintiff from any liability arising out of plaintiff's  
16 reliance on the interim and preliminary financial information,  
17 which defendant Cinematronics furnished to plaintiff.

18 XI

19 The representations made by defendants, and each of them,  
20 were in fact false. The true facts were:

21 1. The financial statements and information on Vectorbeam  
22 delivered to plaintiff did not fairly outline the results of  
23 Vectorbeam's operation for the periods indicated. Instead,  
24 the financial statements provided materially overvalued  
25 inventory and accounts receivable of Vectorbeam, and they  
26 failed to disclose contractual liabilities owed by Vectorbeam.

1           2. Vectorbeam was, in fact, subject to material liabilities  
2 not incurred in the ordinary course of business, which were not  
3 disclosed at any time in the negotiations or in the Purchase  
4 Agreement itself. Specifically, an equipment and furniture  
5 lease and an automobile lease, copies of which leases are  
6 attached hereto as Exhibits "C" and "D" respectively and  
7 incorporated by reference, were not disclosed.

8           3. Vectorbeam was, in fact, a party to material contracts  
9 and commitments not disclosed in the Stock Purchase Agreement,  
10 including an equipment and office furniture lease and an  
11 automobile lease. (Refer to Exhibits "C" and "D" attached)

12           4. The Stock Purchase Agreement did not accurately and  
13 truly reflect the terms of that Stock Purchase Agreement as  
14 they had been agreed to by the parties to the Stock Purchase  
15 Agreement. The Stock Purchase Agreement incorporated a provision  
16 whereby plaintiff assumed liability on the Gil Levine Employment  
17 Agreement, a copy of which is attached hereto as Exhibit "E" and  
18 incorporated by reference. The inclusion of this provision was  
19 directly contrary to the understanding of all parties to the  
20 contract.

21           5. The inventory of Vectorbeam was not accurately valued  
22 In fact, it was overvalued by an amount believed to be in excess  
23 of \$325,000.00.

24           6. Vectorbeam's accounts receivable did not represent only  
25 amounts legitimately believed to be owed to Vectorbeam. In fact,  
26 it included a debt in the amount of \$19,678.18 which the creditor,



1 them to be true. In reliance on these representations  
2 plaintiff was induced to and did execute the above-mentioned  
3 Stock Purchase Agreement and Installment Note referenced above  
4 in paragraph IX. Had plaintiff known the actual facts it  
5 would not have taken such actions. Plaintiff's reliance on  
6 defendants', and each of their, representations was justified  
7 because defendants, and each of them, controlled Vectorbeam  
8 and had access to all of its books and records, and assured  
9 plaintiff that the representations and warranties made were  
10 accurate and true and that it would carry out its contractual  
11 obligations.

12 XIV

13 As a proximate result of defendants', and each of their,  
14 fraud and deceit and the facts herein alleged, plaintiff was  
15 induced to execute the above-mentioned Stock Purchase Agreement  
16 and to purchase all of the issued and outstanding shares of  
17 Vectorbeam for a materially inflated price.

18 XV

19 As a further proximate result of defendants', and each of  
20 their, fraud and deceit, plaintiff became liable on a  
21 contract it had expressly refused to accept liability for, became  
22 liable for undisclosed liabilities and contracts of Vectorbeam,  
23 and assumed liability for goods not delivered to Vectorbeam.

24 XVI

25 As a further proximate result of defendants', and each of  
26 their, fraud and deceit and the facts alleged herein, plaintiff

1 was induced to execute the above-mentioned Corporate Installment  
2 Note in an amount in excess of its real value. By reason of  
3 the facts herein alleged, plaintiff has been damaged in a  
4 sum not yet ascertained. Accordingly, plaintiff prays leave to  
5 amend this Complaint when said sums are ascertained.

6 XVII

7 In doing the acts herein alleged, defendant acted with  
8 oppression, fraud and malice, and plaintiff is entitled to  
9 punitive damages in the sum of \$250,000.00

10 SECOND CAUSE OF ACTION  
11 (NEGLIGENT MISREPRESENTATION)

12 I

13 Plaintiff hereby incorporates by reference paragraphs  
14 I through XI, inclusive, of the First Cause of Action.

15 II

16 Defendants, and each of them, made these representations  
17 with no reasonable ground for believing them to be true.  
18 Plaintiff is informed and believes and thereon alleges that  
19 defendants, and each of them, did not have accurate information  
20 upon which to base their representations. At the time of  
21 making these representations and at all times thereafter  
22 relevant, defendants, and each of them, concealed from plaintiff  
23 their lack of information and their consequent inability to  
24 make the alleged representations accurately.

25 III

26 These representations were made by defendants, and each of

1 them, with the intention to induce plaintiff to act in the  
2 manner herein alleged.

3 IV

4 Plaintiff hereby incorporates by reference paragraphs  
5 XIII through XVI, inclusive, of the First Cause of Action.  
6

7 THIRD CAUSE OF ACTION  
8 (REFORMATION)

9 I

10 Plaintiff hereby incorporates by reference paragraphs I  
11 through VII, inclusive, of plaintiff's First Cause of Action.

12 II

13 Prior to December 5, 1979, plaintiff and defendants,  
14 and each of them, orally agreed on the terms of the Vectorbeam  
15 stock purchase (referenced above in plaintiff's First Cause of  
16 Action), and the method of ascertaining the purchase price  
17 for plaintiff's purchase of all of the issued shares of  
18 Vectorbeam.

19 III

20 On or about December 5, 1979, said oral agreements were  
21 purported to be put into writings in the form of a Stock Purchase  
22 Agreement and a Corporate Installment Note.

23 Said writings were drafted by defendant's agent, Phillip S.  
24 DeCaro, and plaintiff signed said writings in reasonable  
25 reliance on Phillip S. DeCaro's representation that said  
26 written agreements accurately and actually embodied said

1 oral agreement, and without knowledge that they did not represent  
2 said oral agreement. Plaintiff's reliance on the conformity of  
3 the Stock Purchase Agreement to the oral agreement was reasonable  
4 in that defendant had orally acquiesced to plaintiff's demand that  
5 defendant hold plaintiff harmless on the Gil Levine Employment ,  
6 Agreement, and defendant had assured plaintiff that the Stock  
7 Purchase Agreement would reflect that understanding. Plaintiff's  
8 reliance on defendant's assurances that the Promissory Note  
9 accurately embodied the agreement of the parties was reasonable  
10 due to the fact that defendants, and each of them, alone had  
11 access to the total financial, operational and inventory  
12 records of Vectorbeam, and the fact that defendants, and  
13 each of them, had assured plaintiff orally and in writing  
14 that the inventory was accurately valued.

15 v

16 Said written agreement did not represent said oral  
17 agreement to which plaintiff agreed in numerous respects,  
including the following:

18 Although plaintiff and defendants, and each of them,  
19 had expressly agreed that plaintiff would not assume liability  
20 on the Gil Levine Employment Contract, the Stock Purchase  
21 Agreement purports to hold plaintiff liable on this employment  
22 contract. Further, plaintiff and defendants, and each of them,  
23 had expressly agreed that the purchase price paid by plaintiff  
24 and embodied in the Corporate Installment Note would be  
25 determined on the basis of an accurate inventory valuation;  
in fact, the inventory was valued at a figure which exceeds  
26 the actual value of the inventory by an amount in excess of  
\$325,000, and the amount of the Corporate Installment Note

1 fails to reflect this discrepancy.

2 VI

3 Defendants, and each of them, knew that said written  
4 instruments did not represent the oral agreements and made  
5 said representations with the intent that plaintiff rely on  
6 them.

7 VII

8 Defendants, and each of them, prepared and executed  
9 said agreements for the sole purpose of defrauding plaintiff.

10 VIII

11 Plaintiff discovered said error and thereafter notified  
12 defendants, and each of them, of same and asked for a revision  
13 of said written agreements to conform to the true agreements,  
14 but defendants, and each of them, refused and continue to  
15 refuse to consent to said revision.

16  
17 FOURTH CAUSE OF ACTION

18 I

19 Plaintiff hereby incorporates by reference paragraphs I  
20 through IX of plaintiff's First Cause of Action.

21 II

22 On or about December 5, 1979, plaintiff and defendants, and  
23 each of them, entered into a written Stock Purchase Agreement  
24 whereby defendants, and each of them, agreed to sell to  
25 plaintiff 390,000 shares of the common stock of Vectorbeam,  
26 Inc., a California corporation.

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III

Pursuant to the agreement alleged in paragraph II herein, and plaintiff guaranteed Vectorbeam executed a Corporate Installment Note in the amount of \$526,942.00 in favor of defendant Cinematronics as full payment of the securities. Plaintiff made the first \$35,000 installment payment due under the note when it came due on or about March 1, 1980.

IV

Prior to the payment by plaintiff to defendant Cinematronics of the consideration for the securities as alleged in paragraph III herein, defendant Cinematronics warranted to plaintiff that the Vectorbeam inventory, which is the principal asset of the corporation, was accurately valued in accordance with generally accepted accounting practice consistently applied.

V

In truth and in fact, the Vectorbeam inventory which is the principal asset of the corporation is not accurately valued in accordance with generally accepted accounting practices consistently applied in that it overstated the value of the inventory in excess of \$325,000.00.

VI

As a result of the above-described transaction, plaintiff has suffered damages compensable under Corporations Code, § 25501, in an amount unknown at this time. Plaintiff prays leave to amend this Complaint when said sums are ascertained.

1 FIFTH CAUSE OF ACTION

2 I

3 Plaintiff hereby incorporates by reference paragraphs I  
4 through IX of plaintiff's First Cause of Action.

5 II

6 Plaintiff hereby incorporates by reference paragraphs II  
7 through III of plaintiff's Fourth Cause of Action.

8 III

9 By the terms of the Stock Purchase Agreement, defendants,  
10 and each of them, disclosed that the sale of securities in  
11 question had not been qualified by the California Commissioner  
12 of Corporations. By the terms of the Stock Purchase Agreement  
13 defendants, and each of them, further stated that until such  
14 qualification had been obtained, any purported sale of  
15 Vectorbeam securities would be void.

16 IV

17 Prior to the payment by plaintiff to defendants, and each  
18 of them, of the consideration for the securities as alleged  
19 in paragraph II herein, defendants, and each of them, warranted  
20 to plaintiff that the required consent to transfer had been  
21 obtained from the Commissioner of Corporations.

22 V

23 In truth and in fact, the required consent to transfer  
24 had not been obtained by defendants, and each of them, from  
25 the Commissioner of Corporations, and the sale did not  
26

1 comply with the provisions of the California Corporate  
2 Securities Law of 1968.

3 VI

4 As a result of the above-described transaction, plaintiff  
5 has suffered damages in an amount unknown at this time. Plaintiff  
6 prays leave to amend this Complaint, when the amount of said  
7 damages is ascertained.

8  
9 SIXTH CAUSE OF ACTION  
10 (BREACH OF CONTRACT)

11 I

12 Plaintiff hereby incorporates by reference paragraphs I  
13 through IX of plaintiff's First Cause of Action.

14 II

15 Plaintiff's duty of performance of the Stock Purchase  
16 Agreement is subject to the express condition that all of  
17 defendants', and each of their, warranties and representations  
18 made in the Stock Purchase Agreement are substantially correct.

19 III

20 Plaintiff has performed all conditions, covenants and  
21 promises under the contract on his part to be performed except  
22 tender of the April 1, 1980 payment in the amount of \$35,000,  
23 performance of which was excused on the ground that defendants',  
24 and each of their, material breach of the contract excused  
25 plaintiff's duty of performance and on the further ground  
26 that plaintiff's duty of performance was excused by the

1 failure of the express condition that all of defendants', and  
2 each of their, warranties and representations were substantially  
3 true.

4 IV

5 Prior to the filing of this Complaint, defendants, and each  
6 of them, breached the Stock Purchase Agreement in several  
7 respects, including the following:

8 1. Failure of consideration in that the Vectorbeam  
9 inventory which is the principal asset of the corporation  
10 was materially over-valued.

11 2. Prior to the filing of this Complaint, defendants, and  
12 each of them, further breached the Stock Purchase Agreement  
13 by breach of the warranty that all financial statements and  
14 information delivered to plaintiff by defendants, and each of  
15 them, fairly presented the financial condition of the company  
16 as of that date and fairly outlined the results of its operation  
17 for the periods listed in accordance with generally accepted  
18 accounting practices consistently applied.

19 3. Prior to the filing of this Complaint defendants, and  
20 each of them, further breached the Stock Purchase Agreement  
21 in that defendants, and each of them, failed and refused and  
22 have continued to fail and refuse to agree to permit the  
23 subordination of the Corporate Installment Note to inventory and  
24 accounts receivable financing by institutional lenders.

25 V

26 As a result of defendants', and each of their, breach of

1 the Stock Purchase Agreement, plaintiff has been damaged in  
2 an amount not yet ascertained. Plaintiff prays leave to amend  
3 this Complaint when said sums are ascertained.

4  
5 SEVENTH CAUSE OF ACTION

6 I

7 Plaintiff hereby incorporates by reference paragraphs I  
8 through IX of plaintiff's First Cause of Action.

9 II

10 By the terms of the above-mentioned Stock Purchase Agreement  
11 defendants, and each of them, warranted that the financial  
12 statements and information delivered to plaintiff fairly  
13 present the financial condition of the company as of that  
14 date and fairly outline the results of its operations for  
15 the periods indicated, in accordance with generally accepted  
16 accounting principles consistently applied. Said Stock  
17 Purchase Agreement further provides for arbitration in the  
18 event that plaintiff believes that adjustments to the purchase  
19 price are necessary because of overstatement of accounts  
20 receivable, a material omission of notes payable or accounts  
21 payable and/or significant inventory shortages due to physical  
22 shortages, not write-downs for obsolescence.

23 III

24 An actual controversy has arisen and now exists relating  
25 to the rights and duties of the parties herein in that plaintiff  
26 contends that the arbitration clause of the Stock Purchase

1 Agreement is invalid and unenforceable for the reason that  
2 it fraudulently omits to provide a remedy for the most  
3 significant discrepancy in the financial statements - overvaluation  
4 of inventory based on obsolescence. Defendants, and each of  
5 them, dispute this contention and assert that said fact does  
6 not affect the validity of said arbitration provision of the  
7 Stock Purchase Agreement.

8 IV

9 Plaintiff desires a judicial determination of its rights  
10 and duties, and a declaration as to which party's interpretation  
11 of the Stock Purchase Agreement is correct.

12 V

13 Such a declaration is necessary and appropriate at this  
14 time in order that plaintiff may ascertain his rights and duties.

15 EIGHTH CAUSE OF ACTION  
16 (INDEMNITY)

17 I

18 Plaintiff hereby incorporates by reference paragraphs I  
19 through IX of plaintiff's First Cause of Action.

20 II

21 Said Stock Purchase Agreement purports to hold plaintiff  
22 liable on the Gil Levine Employment Agreement.

23 III

24 That incidental to the Stock Purchase Agreement plaintiff  
25 and defendants entered into a written agreement, a copy of which  
26

1 is attached hereto as Exhibit "F" and made a part hereof,  
2 whereby defendant promised to indemnify plaintiff and hold him  
3 harmless from liability on the Gil Levine Employment Contract.

4 IV

5 That on or about March 17, 1980, Gil Levine made a claim  
6 against Vectorbeam and plaintiff herein arising out of said  
7 employment agreement.

8 V

9 Plaintiff has tendered to plaintiff the defense and  
10 indemnification of said claim, but defendant has refused to  
11 defend and/or indemnify plaintiff herein.

12 VI

13 Plaintiff has been forced to incur, has in fact incurred,  
14 and will continue to incur, attorney's fees and costs in  
15 defending the action of Gil Levine. When the exact and full  
16 amount of such fees and costs becomes known to plaintiff, it  
17 will move to amend this Complaint to state such amount.

18 VII

19 Plaintiff desires a judicial declaration that defendant is  
20 obliged to defend and indemnify plaintiff herein, and should  
21 plaintiff suffer any costs or expenses hereby, plaintiff be  
22 awarded judgment against defendant in a like sum.

23 WHEREFORE, plaintiff prays judgment as follows:

- 24 1. For compensating damages according to proof.  
25 2. For punitive damages in the sum of \$250,000.00  
26 3. For attorney's fees.

1 4. For costs of suit incurred herein;

2 5. That the Stock Purchase Agreement be reformed to  
3 show the real intent of the parties.

4 6. That the Corporate Installment Note be reformed to  
5 show the true intent of the parties.

6 7. That plaintiff be awarded such other and further relief  
7 as is just and reasonable under the circumstances.

8 8. For a declaration that the arbitration provision of  
9 the Stock Purchase Agreement is void and of no force and effect.

10 10. For a declaration that defendant Cinematronics is  
11 obliged to defend and indemnify plaintiff herein against any  
12 claims made under the Gil Levine Employment Agreement.

13  
14 Dated: April 17, 1980.

15 CRIST, CRIST, GRIFFITHS,  
16 BRYANT, SCHULZ & BIORN

17  
18 ROBERT E. SCHULZ  
19 By \_\_\_\_\_  
20 Robert E. Schulz  
21 Attorneys for Plaintiff  
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PETTIT & MARTIN  
ATTORNEYS AT LAW

THE TRANSAMERICA BUILDING  
600 MONTGOMERY STREET  
TWENTY-FIRST FLOOR  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 434-4000

March 17, 1980

CABLE NEWS  
TELEPHONE 415 782-2571  
1800 MASSACHUSETTS AVENUE, N.E.  
WASHINGTON, D. C. 20002  
1000 782-2182  
3048 CENTURY PARK EAST  
LOS ANGELES, CALIFORNIA 90057  
TELEPHONE 213 782-2175  
THE WELLS FARGO BUILDING  
181 PARK CENTER PLAZA, SUITE 208  
SAN JOSE, CALIFORNIA 95113  
408 292-6210

OFFICE  
SUITE 111, 1010  
SUITE 111, 1010  
SUITE 111, 1010  
SUITE 111, 1010

Mr. H. R. Kauffman  
President  
Vectorbeam/Exidy  
33441 Central Avenue  
Union City, California 94587

Re: Gil Levine

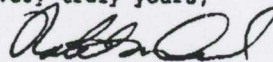
Dear Mr. Kauffman:

We represent Mr. Gil Levine. He has informed us of a dispute that he has with you concerning his employment contract. This dispute concerns the termination of Mr. Levine's employment by you.

This letter is our formal demand for arbitration of this dispute in accordance with the terms of Mr. Levine's employment contract. Please have your attorney contact us to discuss the selection of arbitrators as provided for by that contract as soon as possible.

If we do not hear from you within 15 days from the date of this letter, we will assume that you have refused to arbitrate this matter and will seek a court order to compel such arbitration in accordance with Section 1281.2 of the California Code of Civil Procedure.

Very truly yours,

  
Robert M. Cassel

RMC:laj  
cc: Gilbert Levine

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April 9, 1980

Mr. Jim Pierce  
President  
Cinematronics, Inc.  
1466 Pioneer Way, Suite 6  
El Caho, CA 92020

Re: Gil Levine

Dear Mr. Pierce:

As you know, this office represents Exidy and Vectorbeam. We have recently received a letter from an attorney for Mr. Gil Levine, a copy of which I enclose.

As I believe you are aware, an indemnification agreement was entered into at the time of the Stock Purchase Agreement whereby Cinematronics agreed to defend and indemnify Vectorbeam and Exidy from any claim arising out of the Levine employment agreement. Please consider this letter a tender of the defense of this claim and a request to be indemnified from Mr. Levine in this matter.

Very truly yours,

CRIST, CRIST, GRIFFITHS,  
BRYANT, SCHULS & BIORN

Robert E. Schuls

rms  
cc: Phillip De Caro w/enclosure  
enclosure

bcc: Leslie Hauser

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